

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION**

DAD'S PRODUCTS COMPANY, INC.,)	
)	
)	Civil Action No. 03-350
Plaintiff,)	
)	
v.)	The Honorable Sean J. McLaughlin
SERGEANT'S PET CARE PRODUCTS,)	
INC.)	
)	
Defendant.)	

**SERGEANT'S PET CARE PRODUCTS, INC.'S
MOTION FOR DATE CERTAIN FOR TRIAL**

Sergeant's Pet Care Products, Inc. ("SPCP") files this Motion for Date Certain for Trial as follows.

I. Relevant Background

1. By notice filed October 26, 2005, the Court advised counsel that this case is listed for trial beginning on November 28, 2005 (the "Notice").
2. The Notice advises that any cases listed are to be called for trial between November 28, 2005, and December 22, 2005, and counsel are to be prepared to select a jury and proceed to trial when counsel's case is called.
3. This action is listed as the seventh case on the Notice, with all six matters listed before it being criminal matters. The Court's Courtroom Deputy has advised that the first listed matter has already been disposed of through settlement or otherwise. It is likely, as the Courtroom Deputy suggested, that all of the remaining criminal matters listed before this matter

will likewise be similarly disposed of in advance of November 28, 2005. Therefore, it is likely that this matter will be the first matter called for trial on Monday, November 28, 2005.

4. Both SPCP and Plaintiff have filed motions for summary judgment, which are currently pending before the Court.

5. A "settlement conference" is presently scheduled to occur on November 8, 2005, at 1:30 P.M., with argument on the parties' cross motions for summary judgment to occur after the conference, if necessary.¹

II. Argument

6. For the following reasons, SPCP respectfully requests that a date certain be set for trial in this matter at the Court's earliest convenience on or after December 5, 2005.

7. All of SPCP's witnesses will be required to travel from either Dallas, Texas or Omaha, Nebraska for purposes of trial.

8. Given the likelihood that this matter will be called for trial on Monday, November 28, 2005 – the Monday after the Thanksgiving weekend – SPCP's witnesses will likely be required to secure travel arrangements to Erie during the busiest travel/holiday weekend of the year and on very short notice, at significant extra cost and expense.

9. SPCP respectfully submits that a trial date of November 28, 2005 would impose an undue hardship and burden on SPCP's witnesses in light of this travel situation over the holiday weekend (in addition to the disruption to various family plans and commitments that it would cause).

¹ Plaintiff recently filed its Pre-Trial Statement. SPCP's Pre-Trial Statement is not due until November 11, 2005.

10. SPCP also respectfully submits that commencing trial on November 28, 2005, would impose an undue hardship on David White, lead counsel for SPCP. Lead counsel is a single father who has had and would have difficulty finding a babysitter/making appropriate arrangements to have someone watch his children over the extended Thanksgiving holiday (particularly given that they are off from school on Friday and Monday).

11. Finally, lead counsel is scheduled to participate in a mediation of a dispute involving the construction of an airport involving multiple parties in Atlanta, Georgia, on November 30 and December 1, 2005.

12. SPCP respectfully submits that a trial date commencing on or after December 5, 2005 is a reasonable request that would not unreasonably delay trial, would promote judicial efficiency and would not cause any prejudice to any party.

For all of the reasons set forth above, SPCP respectfully requests that this Court enter a date certain for trial, commencing on or after December 5, 2005.

Dated: November 4, 2005

Respectfully submitted,

By: /s/ David White, Esquire
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